

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JOSEF KUSSER

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Appeal No. 98-1447  
Application 08/385,356<sup>1</sup>

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ON BRIEF

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Before COHEN, MEISTER and McQUADE, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 31. Subsequent to the final rejection and the entry

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<sup>1</sup> Application for patent filed February 8, 1995.

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of a new ground of rejection in the main answer, amendments were filed and entered such that the status of the claims is as follows.

Claims 32 and 33 stand allowed, and the examiner has indicated that claims 9 through 16 and 24 through 31 are objected to but would be allowable in independent form. Thus, we have before us  
for review on appeal a rejection of claims 1 through 8 and 17 through 23.

Appellant's invention pertains to a base bearing assembly for bearing an upright ornamental object. An understanding of the invention can be derived from a reading of exemplary claim 1, a copy of which appears in APPENDIX B of the reply brief (Paper No. 15).

As evidence of obviousness, the examiner has applied the documents listed below:

Blizard

2,695,199

Nov. 23, 1954

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Unterberger 3,537,763

Nov. 3, 1970

The following rejection is before us for review.<sup>2</sup>

Claims 1 through 8 and 17 through 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Unterberger in view of Blizzard.

The full text of the examiner's rejection and response to the argument presented by appellant appears in the main and supplemental answers (Paper Nos. 14 and 21), while the

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<sup>2</sup> It is clear to us that the inclusion of the rejection of claims 8 through 16 and 23 through 31 under 35 U.S.C. 112, first paragraph, in the answer was inadvertent since this rejection was indicated to have been overcome and obviously withdrawn (Paper No. 10). Further, it is noted that the new ground of rejection under 35 U.S.C. 112, second paragraph, appearing on page 6 of the main answer, was overcome as specified on page 2 of the supplemental answer (Paper No. 21).

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complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 13, 15, and 17).

#### OPINION

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the board has carefully considered

appellant's specification and claims, the applied patents,<sup>3</sup> and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determination which follows.

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<sup>3</sup> In our evaluation of the applied references, we have considered all of the disclosure of each patent for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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We affirm the rejection of claim 1, but reverse the rejection of claims 2 through 8 and 17 through 23. Our reasoning appears below.

Claim 1 is drawn to a base bearing assembly for bearing an upright object comprising, inter alia, a pedestal arranged on a base, with the pedestal borne by a film of liquid, floatingly rotatable about a perpendicular axis on the base.

A reading of the Unterberger document reveals to us the teaching of a hydrostatic<sup>4</sup> air-bearing system, preferably for precision round tables. Unterberger discloses (Fig. 1) a round table mounting plate 17 for work piece 20 secured to

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<sup>4</sup> Hydrostatic relates to liquids at rest or the pressures they exert or transmit. Webster's New Collegiate Dictionary, G. & C. Merriam Company, Springfield, Massachusetts, 1979.

bearing inner part 10 (pedestal), with the spherically formed bearing parts 10, 10' cooperating with spherically formed bearing carrying faces of housing 12 (base) and having pressurized air therebetween.

The patent to Blizzard addresses a bearing (Fig. 1) wherein a supported element 11 (hollow sphere) is floated on a bearing provided by a cup-shaped support 12. The patentee expressly indicates that air, or other fluids such as liquids and other gases may be used as a lubricant (column 1, lines 30 through 33).

Blizzard recognizes the compressible nature of air as a disadvantage (column 1, lines 46 through 51). Of additional interest is Fig. 6 of this reference, wherein a bearing with a truncated conoid shape is depicted (column 4, lines 35 through 41).

In applying the test for obviousness,<sup>5</sup> this panel of the

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<sup>5</sup> The test for obviousness is what the combined teachings of references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

board makes the determination that it would have been obvious to one having ordinary skill in the art to substitute a liquid for air in the bearing of Unterberger, based upon the knowledge in the art as reflected in the teaching of Blizzard. As we see it, the motivation on the part of one having ordinary skill for making this modification would have simply been to obtain the expected benefit of a liquid, when the known compressibility disadvantage of air would be adverse for a particular use. Our position on this matter presumes skill, of course, on the part of those practicing this art, not the converse. See In re Sovish, 769 F.2d 738, 742, 226 USPQ 771, 774 (Fed. Cir. 1985).

The argument of appellant in the main and reply briefs does not persuade us of error on the part of the examiner in rejecting claim 1 under 35 U.S.C. § 103. Unlike appellant (main brief, page 12), we concluded, supra, that the combined teachings of the applied references would have been suggestive of using liquid with the bearing of Unterberger and thereby

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effect the broadly recited base bearing assembly of claim 1. In particular, and contrary to the view advocated (reply brief, page 3), it is our opinion that one of ordinary skill in the art would have expected liquid to function appropriately with the spherical surface bearing arrangement of Unterberger, particularly in light of the applicability of air or liquid for a spherical surface bearing as taught by Blizard. No evidence has been proffered by appellant to persuade us otherwise.

We turn now to the remaining claims on appeal.

Claims 2 and 17, claims from which all other claims on appeal respectively depend directly or indirectly, require, inter alia, an annular bottom surface of the pedestal and an annular top surface for the base in opposition to the bottom surface, with a film of liquid between the bottom surface of the pedestal and the top surface of the base. Consistent with appellant's underlying disclosure (specification, page 7), the claimed film of liquid maintained between the pedestal bottom surface and the base top surface is fairly understood to



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assist in having the pedestal borne practically frictionlessly by the base.

Simply stated, a review of the overall teachings of Unterberger (Fig. 1) and Blizzard (Fig. 6) does not reveal to us a suggestion for the content of claims 2 and 17, in particular. In our opinion, one having ordinary skill in the art would not have derived from the applied teachings, assessed alone and in combination, any suggestion for a film of liquid acting between an annular pedestal bottom surface and an annular base top surface for bearing or supporting the pedestal.

In summary, this panel of the board has affirmed the rejection of claim 1, but has reversed the rejection of claims 2 through 8 and 17 through 23 under 35 U.S.C. § 103 as being unpatentable over Unterberger in view of Blizzard.

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The decision of the examiner is affirmed-in-part.

AFFIRMED-IN-PART

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	)
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	)	
	)	BOARD OF PATENT
JAMES M. MEISTER	)	
Administrative Patent Judge	)	APPEALS AND
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	)	INTERFERENCES
	)	
JOHN P. McQUADE	)	
Administrative Patent Judge	)	

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